



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

March 14, 1997

The Honorable Gonzalo Barrientos
Chair, Committee of the Whole on
Legislative and Congressional Redistricting
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-025

Re: Municipal court collection of security fee
from a defendant convicted in a trial of a mis-
demeanor offense (ID# 39149)

Dear Senator Barrientos:

You ask us to construe article 102.017 of the Code of Criminal Procedure. Article 102.017 requires a defendant who is convicted in a trial for a criminal offense in a county court, county court at law, or district court to pay a "security fee" as a cost of court. The collected fees must be deposited in a security fund and used to purchase x-ray machines, metal detectors, surveillance equipment, and other security items for buildings housing a court.

As first enacted in 1993, article 102.017 mandated collection of the security fee only from defendants convicted in county courts, county courts at law, and district courts. The statute was amended by the Seventy-fourth Legislature in 1995 to authorize municipalities to collect the fee from misdemeanor defendants convicted in municipal court trials. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 764, § 2, 1995 Tex. Gen. Laws 3969, 3970. The 1995 amendment also added a definition of what it means to be "convicted" of an offense. *Id.* The statute now reads, in pertinent part:

(a) A defendant convicted in a trial for a felony offense in a district court shall pay a \$5 security fee as a cost of court.

(b) A defendant convicted in a trial for a misdemeanor offense in a county court, county court at law, or a district court shall pay a \$3 security fee as a cost of court. The governing body of a municipality by ordinance may create a municipal court building security fund and may require a defendant convicted in a trial for a misdemeanor offense in a municipal court to pay a \$3 security fee as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

Code Crim. Proc. art. 102.017.

With respect to municipal courts, you ask us to determine what constitutes a "trial" for purposes of collecting the security fee from defendants "convicted in a trial." While article 102.017 defines what it means to be "convicted," neither article 102.017 nor any other provision in the Code of Criminal Procedure defines the term "trial" or the phrase "convicted in a trial." A "trial" is generally defined as "a judicial examination and determination of issues between parties to action." BLACK'S LAW DICTIONARY 1504 (6th ed. 1990); see *Marrs v. Railroad Comm'n*, 177 S.W.2d 941, 947 (Tex. 1944). In Texas, courts in criminal cases define "trial" within the context of the particular statute or constitutional provision at issue. See, e.g., *Sanchez v. State*, 926 S.W.2d 391, 395 (Tex. App.—El Paso 1996, no writ) ("trial" for purposes of Texas Rule of Criminal Procedure 18a(a) means "trial on the merits or a substantial hearing of some sort"); *Sparkman v. State*, 634 S.W.2d 82 (Tex. App.—Tyler 1982, no writ) ("trial" for purposes of Sixth Amendment right to speedy trial means "determination by a jury of guilt or innocence").

You ask whether such procedures as a defendant's appearance in open court at a pre-trial hearing, arraignment, or docket call would trigger assessment of the fee. You similarly inquire about the effect of an entry of judgment upon a written plea by mail. As your questions suggest, the phrase "convicted in a trial" in article 102.017 appears to be contradictory because, in certain cases, a defendant may be "convicted" of a crime as that term is defined by article 102.017 without ever having had a "trial" in the ordinary sense—that is, without ever appearing before a judge or jury or even setting foot inside a courthouse.

For example, a defendant charged with a misdemeanor punishable by fine only may make a plea of guilty or nolo contendere by mail to the court. Code Crim. Proc. art. 27.14(b). In a misdemeanor case arising out of a moving traffic violation punishable by fine only, payment of the fine by the defendant constitutes a finding of guilty in open court, as though the defendant has pleaded nolo contendere. *Id.* art. 27.14(c). In both such cases, a judgment¹ and sentence² may be rendered in the absence of the defendant. *Id.* art. 42.14 ("The judgment and sentence in a misdemeanor case may be rendered in the absence of the defendant.").

We examined the legislative history of the statute for a determination of what "convicted in a trial" means in the context of the security fee statute. Article 102.017 was enacted along with now section 291.008 of the Local Government Code³ in 1993. Senate Bill 243, and its companion House Bill 882, were introduced in response to several shootings in courthouses, and were designed to

¹A "judgment" is "a written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant." Code Crim. Proc. art. 42.01, § 1.

²A "sentence" is "that part of the judgment, or order revoking a suspension of the imposition of a sentence, that orders that the punishment be carried into execution in the manner prescribed by law." *Id.* art. 42.02.

³Section 291.008 of the Local Government Code authorizes county commissioners courts to establish the courthouse security fee for county courts, county courts at law, and district courts.

provide counties with the means to implement security measures to protect courthouse personnel and visitors from violent acts. *See* House Comm. on County Affairs, Bill Analysis, S.B. 243, 73d Leg., (1993) (hereinafter "Bill Analysis"); Hearings on S.B. 243 Before the Senate Comm. on Intergovernmental Relations, 73d Leg. 1 (Feb. 17, 1993) (statement of Senator Leedom, author) (transcript available from Senate Staff Services); *see also* Attorney General Opinion DM-283 (1994) (discussing the legislative history of article 102.017).

Senate Bill 243 and House Bill 882 as originally introduced did not propose to collect a security fee from defendants in criminal cases. Instead, the legislation was conceived as a "user fee" to be imposed on persons who filed civil actions in a court. *See* Bill Analysis, *supra*; Hearings on S.B. 243 Before the Senate Comm. on Intergovernmental Relations, 73d Leg. 1 (Feb. 17, 1993) (statement of Senator Leedom, author) (transcript available from Senate Staff Services) (referring to fee as "user fee"); *id.* (statement of Craig Pardue, representing Dallas County) (same); Hearings on S.B. 243 Before the House Comm. on County Affairs, 73d Leg. (statement of Representative Jones, sponsor) (Apr. 21, 1993) (same); Debate on S.B. 243 on the Floor of the Senate, 73d Leg. 2 (Mar. 17, 1993) (statement of Senator Sibley) (transcript available from Senate Staff Services) (same); *id.* at 6 (statement of Senator Ratliff) (same).

During Senate Bill 243's second reading on the Senate floor, Senator Harris objected to the exclusion of criminal cases from the bill's reach. In response to that concern, Senator Leedom on the bill's third reading introduced a floor substitute that proposed exacting a five dollar fee from a convicted defendant in a felony case and a three dollar fee from a convicted defendant in a misdemeanor case. Debate on S.B. 243 on the Floor of the Senate, 73d Leg. 1 (Apr. 15, 1993) (transcript available from Senate Staff Services). Senator Leedom's amendment also proposed a one dollar fee for the filing of all on all documents in civil cases, in order to extend the fee to "all those that come in the courthouse [to] file papers." Debate on S.B. 243 on the Floor of the Senate, 73d Leg. 1 (Apr. 15, 1993) (transcript available from Senate Staff Services).

As enacted in 1993, article 102.017 provided for the fee to be imposed upon a person "convicted in a trial" but did not define that phrase. Other fee provisions in effect at the time included such things as deferred adjudication in their definition of "convicted." *See, e.g.,* Code Crim. Proc. arts. 102.005, .013 - .018, .051, .081 (all defining "convicted" to include deferred adjudication). Senate Bill 349 was introduced in 1995 as a "clean-up bill" to make article 102.017 consistent with other fee provisions in the Code of Criminal Procedure, and to make it clear that conviction in a full trial on the merits before a jury was not necessary for the statute to be invoked. Debate on S.B. 349 on the Floor of the Senate, 74th Leg. (Mar. 29, 1995) (statement of Senator Brown) (transcript available from Senate Staff Services) (referring to S.B. 349 as a "clean-up bill"). According to the House Research Organization, supporters of Senate Bill 349 argued that "fairness dictates that a person who has gone through the court system and remains under the court's supervision, and who is clearly less than innocent of the charges, should pay a fee for court services just as the people who are found guilty by a jury." House Research Organization Bill Analysis (May 23, 1995). A person is now considered "convicted" under the security fee statute if: (1) a sentence is imposed on the person; (2) the person receives community supervision, including deferred adjudication; or (3) the court defers final disposition of the person's case. Code Crim. Proc. art. 102.017(c).

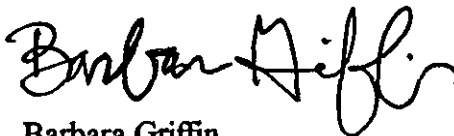
You ask whether entry of a judgment upon a written plea by mail triggers collection of the security fee from a defendant. As discussed above, a defendant can enter a plea or pay a fine by mail and be convicted of an offense without ever appearing before a judge or entering a courthouse. We believe the legislature intended persons convicted of a crime to be subject to the fee whether or not the procedure in which they were convicted involved an appearance in court. The event that triggers collection of the fee is the "convict[ion]" as that term is defined by the statute, and the occurrence of a "trial," however defined, is irrelevant.⁴ While our conclusion has the effect of disregarding the term "trial" as used in the phrase "convicted in trial," we believe that our construction accurately reflects the intent of the legislature. *See Rogers v. Dallas Rwy. & Terminal Co.*, 214 S.W.2d 160, 167 (Tex. Civ. App.—Dallas 1948), *aff'd*, 218 S.W.2d 456 (Tex. 1949) (stating that words may be omitted from statute to arrive at legislative intent); *see also* Gov't Code § 312.005 ("In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy."). We conclude, therefore, that entry of a judgment upon a written plea by mail triggers collection of the security fee from a defendant.

You also ask if a defendant's appearance in open court at a pre-trial hearing, arraignment, or docket call triggers collection of the fee. We conclude that it may not, unless the appearance ultimately results in a conviction as defined by article 102.017. None of these procedures falls within the statute's definition of "convicted," and the fee may be assessed only when the defendant is convicted.

S U M M A R Y

A security fee may be collected pursuant to Code of Criminal Procedure article 102.017 from a defendant who is "convicted" of an offense as the term "convicted" is defined by article 102.017, whether or not the defendant was convicted in a "trial." Entry of a judgment upon a written plea by mail triggers collection of the security fee from a defendant, but a defendant's appearance in open court at a pre-trial hearing, arraignment, or docket call, absent a conviction, does not.

Yours very truly,



Barbara Griffin
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Opinion Committee

⁴In any event, while a plea and conviction by mail do not involve a trial before a judge or jury, they nevertheless involve a judicial finding that the defendant is guilty of an offense that we believe comports with the ordinary meaning of "trial."